

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ANTHONY J. FUTIA, JR.,
Plaintiff,

V.

RAYMOND ROBERTS, DOUGLAS
O'DONNELL, CHASE BANK, BANK OF
GREENE COUNTY, WESTCHESTER
COUNTY CLERK TIMOTHY C. IDONI, SSA
COMMISSIONER KILOLO KIJAKZI,
Defendants.

ORDER

23 CV 1774 (VB)

Copies Mailed/Faxed 4/25/23 LC
Chambers of Vincent L. Briccetti

Plaintiff, proceeding pro se, commenced this action by filing a summons and complaint in Supreme Court, Westchester County, on February 2, 2023. (Doc. #1-1). On March 1, 2023, defendants Raymond Roberts, Douglas O'Donnell, and Kilolo Kijakazi (collectively, the "Federal Defendants"), removed the case to this Court pursuant to 28 U.S.C. § 1442(a)(1) (the "Federal Officer Removal Statute"), which states:

(a) A civil action or criminal prosecution that is commenced in a State court and that is against or directed to any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or of any agency thereof, in an official or individual capacity, for or relating to any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

In support, the Federal Defendants argued removal is proper because they “are officers of the United States who are being sued for acts undertaken under color of federal office.” (Doc. #1 ¶ 5).

On March 8, 2023, the Federal Defendants filed a motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(1). (Doc. #5).

On March 29, 2023, plaintiff filed a document entitled “Jurisdiction Challenge” in which he opposes removal of this action to this Court because federal courts are courts of limited jurisdiction and the Federal Defendants filed a motion to dismiss pursuant to Rule 12(b)(1). (Doc. #12). Further, plaintiff argues this action “is a case of fraud and torts” and thus, “there are no constitutional issues to be decided here and the federal court lacks both subject matter and *personam* jurisdiction. Therefore, plaintiff moves this Court to return this ‘Action at Law’ back to the aforesaid originating State Court for Justice.” (*Id.* at 6). The Court thus construes plaintiff’s Jurisdiction Challenge as a motion to remand.

On April 11, 2023, the Federal Defendants filed an opposition. (Doc. #21). The Federal Defendants argue removal to this Court was proper under the Federal Officer Removal Statute because this is a civil action against them “for or relating to any act under color of [federal] office.” 28 U.S.C. § 1442(a)(1).

The Federal Defendants are correct that because plaintiff sues them in their capacities as federal officers, removal of this action is proper. (See, e.g., Doc. #1-1 at 2 (describing the Federal Defendants as “Revenue Officer Raymond Roberts,” “IRS Acting Manager Douglas O’Donnell,” and “Social Security Administration, Acting SSA Commissioner Kilolo Kjazkazi”)). In addition, the Federal Defendants’ motion to dismiss—in which they assert the defense of qualified immunity—demonstrates what the Supreme Court described as “one of the most important reasons for removal . . . to have the validity of the defense of official immunity tried in a federal court.” Willingham v. Morgan, 395 U.S. 402, 407 (1969).

Accordingly, plaintiff’s motion to remand, styled as a Jurisdiction Challenge, is DENIED.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppededge v. United States, 369 U.S. 438, 444–45 (1962).

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: April 25, 2023
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge